

ESTTA Tracking number: **ESTTA773955**

Filing date: **09/30/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Zearn, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	261 West 35th Street 15th Floor New York, NY 10001 UNITED STATES		

Attorney information	Kristen McCallion Fish & Richardson P.C. PO BOX 1022 Minneapolis, MN 55440-1022 UNITED STATES kxm@fr.com, tmdoctc@fr.com, cheng@fr.com, harnal@fr.com, bacaj@fr.com, sbell@fr.com Phone:212-641-2261
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Registration Subject to Cancellation

Registration No	4034812	Registration date	10/04/2011
Registrant	Douglas C Rubel 2nd Floor Asheville, AZ 28801 UNITED STATES		

Goods/Services Subject to Cancellation

Class 028. First Use: 2011/01/01 First Use In Commerce: 2011/01/01 All goods and services in the class are cancelled, namely: Building games; Manipulative games

Grounds for Cancellation

No use of mark in commerce before application, amendment to allege use, or statement of use was filed	Trademark Act Sections 14(1) and 1(a), (c), and (d)
Abandonment	Trademark Act Section 14(3)

Attachments	2016-09-30 Petition for Cancellation - TOWERS OF POWER.pdf(106875 bytes) Exhibit A.pdf(126771 bytes) Exhibit B.pdf(346462 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/KXM/
Name	Kristen McCallion
Date	09/30/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ZEARN, INC.,

Petitioner,

v.

DOUGLAS C. RUBEL,

Registrant.

Mark: TOWERS OF POWER

Reg. No.: 4,034,812

Issued: October 4, 2011

Cancellation No. _____

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITION FOR CANCELLATION

Petitioner Zearn, Inc. (hereinafter, “Petitioner”), a Delaware corporation, having a place of business at 261 West 35th Street, 15th Floor, New York, NY 10001, believes that it is damaged by the above-identified registration, Reg. No. 4,034,812, of the mark TOWERS OF POWER (the “’812 Registration”), and hereby petitions to cancel the same under Section 14 of the Lanham Act, 15 U.S.C. § 1064, on the grounds that the owner of the ’812 Registration, Douglas C. Rubel (hereinafter, “Registrant”) never used the mark TOWER OF POWER in interstate commerce, or has ceased using the mark TOWER OF POWER and has no intention of resuming use. As grounds for cancellation, Petitioner asserts the following:

1. Petitioner is a non-profit digital learning organization engaged in the business of providing personalized digital lessons and small group teaching and learning programs in the field of math for students in grades K-8.

2. Per the address on file with the USPTO, Registrant is a U.S. citizen having an

address at 108 Fox Chase Road West, Asheville, North Carolina, United States 28804.

3. On or about December 11, 2015, Petitioner filed U.S. trademark application Serial No. 86/846,744 (the “’744 Application”) for the mark TOWER OF POWER, based on its use in commerce in connection with “educational services, namely, providing online instruction and educational materials for learning and teaching mathematics and problem solving skills in the field of mathematics” in International Class 41. Attached hereto as Exhibit A is a true and correct copy of the TSDR report showing the details of the ’744 Application.

4. On or about April 1, 2016, the Examining Attorney assigned to the ’744 Application issued an Office Action, refusing registration of Petitioner’s mark based, in part, on a likelihood of confusion with the mark, TOWERS OF POWER, shown in Registrant’s ’812 Registration. As a result, Petitioner is and will continue to be damaged by the continued registration of the mark shown in the ’812 Registration and has standing to seek cancellation of the ’812 Registration.

Registrant’s Non-Use and Abandonment of the TOWERS OF POWER Mark

5. The ’812 Registration claims use of the TOWERS OF POWER mark as of January 1, 2011, in connection with “[b]uilding games; [m]anipulative games” in International Class 28.

6. The specimen submitted by Registrant to obtain the ’812 Registration, described as “[p]roduction artwork of product packaging” (emphasis supplied) did not demonstrate actual use of the TOWERS OF POWER mark in commerce and was thus improper, and should not have been accepted by the Examining Attorney. TEMP 904.04(a). Attached as Exhibit B are true and correct copies of Registrant’s specimen, and Registrant’s application containing the description of this specimen retrieved from TSDR.

7. Upon information and belief, the product described in the ’812 Registration was never available for purchase by the general public.

8. Petitioner has not located any evidence that the games described in the '812 Registration were ever sold under the TOWERS OF POWER mark.

9. Upon information and belief, Registrant had not made bona fide use of the TOWERS of POWER mark in commerce as of the filing date of March 1, 2011 of Registrant's use-based application (Ser. No. 85/254,582).

10. Upon information and belief, the TOWERS OF POWER mark as shown in the '812 Registration has never been used by Registrant in commerce in conjunction with the goods set forth in the '812 Registration.

11. Registrant conducted, and may still conduct, business under the name "Mindwalk."

12. Upon information and belief, Registrant owned and/or operated websites at www.mindwalkcreative.com and www.mindwalking.com that were used in connection with toys and games.

13. The domain www.mindwalkcreative.com is no longer registered and the website at www.mindwalking.com contains no content.

14. Toys sold under the name Mindwalk are available for sale on Amazon.com. *See* https://www.amazon.com/Mindwalk/b/ref=bl_dp_s_web_3035647011?ie=UTF8&node=3035647011&field-lbr_brands_browse-bin=Mindwalk.

15. Petitioner has found no references to a game produced by or otherwise associated with Registrant that is offered in connection with the TOWERS OF POWER mark on Amazon.com or elsewhere on the Internet.

16. On September 12, 2016, Registrant advised a representative of the Petitioner that the TOWERS OF POWER game "is no longer available."

17. To the extent Registrant ever used the mark TOWERS OF POWER in interstate commerce, Registrant has ceased using the mark TOWERS OF POWER and, upon information and belief, has no intention of resuming use.

18. Upon information and belief, Registrant has not used the TOWERS OF POWER mark in connection with “[b]uilding games; [m]anipulative games” for at least the last three consecutive years, if ever, thereby constituting prima facie evidence of abandonment of the TOWERS OF POWER mark as shown in the ’812 Registration.

19. Registrant has abandoned its rights in the TOWERS OF POWER mark and the ’812 Registration, should be cancelled.

20. Petitioner is and will be damaged by Registrant’s registration because its ’744 Application was refused based in part on Registrant’s ’812 Registration.

WHEREFORE, Petitioner Zearn, Inc., respectfully prays that this Petition for Cancellation be granted, and that Registration No. 4,034,812 for the TOWERS OF POWER mark be cancelled.

A filing fee has been submitted electronically. If the filing fee is found to be insufficient for any reason, please charge the undersigned’s Deposit Account No. 06-1050.

Respectfully submitted,

FISH & RICHARDSON P.C.

Dated: September 30, 2016

By: /Kristen McCallion/
Kristen McCallion
P.O. Box 1022
Minneapolis, MN 55440-1022
mccallion@fr.com
tmdoctc@fr.com

Attorney for Petitioner
ZEARN, INC.

CERTIFICATE OF SERVICE

I hereby that a true and correct copy of the foregoing PETITION FOR CANCELLATION has been served by First Class Mail, postage prepaid, and electronic mail on Registrant at the following address, on this 30th day of September, 2016.

Douglas C. Rubel
108 Fox Chase Road West
Asheville, NC 28804
United States
dorubel@gmail.com


*/Vivian Cheng/*_____

Vivian Cheng

Exhibit A

1. The Post Registration "Maintenance Tab" has been temporarily disabled. It will return soon.

2. The Trademark organization is beta testing a next generation examination system. As a result, there may be instances where Office actions have unexpected formatting or spacing issues. The Office is working on improvements to resolve these issues and appreciates your patience. Please contact us at [TMFeedback](#)

STATUS	DOCUMENTS	Back to Search	Print
Generated on:	This page was generated by TSDR on 2016-09-30 12:32:10 EDT		
Mark:	TOWER OF POWER		
	TOWER OF POWER		
US Serial Number:	86846744	Application Filing Date:	Dec. 11, 2015
Filed as TEAS RF:	Yes	Currently TEAS RF:	Yes
Register:	Principal		
Mark Type:	Service Mark		
TM5 Common Status Descriptor:	LIVE/APPLICATION/Under Examination		
	 <p>The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.</p>		
Status:	A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.		
Status Date:	Apr. 01, 2016		
▼ Mark Information ▲ Collapse All			
Mark Literal Elements:	TOWER OF POWER		
Standard Character Claim:	Yes. The mark consists of standard characters without claim to any particular font style, size, or color.		
Mark Drawing Type:	4 - STANDARD CHARACTER MARK		
▼ Goods and Services			
Note:			
The following symbols indicate that the registrant/owner has amended the goods/services:			
<ul style="list-style-type: none"> • Brackets [...] indicate deleted goods/services; • Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and • Asterisks *...* identify additional (new) wording in the goods/services. 			
For:	Educational services, namely, providing online instruction and educational materials for learning and teaching mathematics and problem solving skills in the field of mathematics		
International Class(es):	041 - Primary Class	U.S Class(es):	100, 101, 107
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	Mar. 11, 2014	Use in Commerce:	Mar. 11, 2014
▼ Basis Information (Case Level)			
Filed Use:	Yes	Currently Use:	Yes
Filed ITU:	No	Currently ITU:	No
Filed 44D:	No	Currently 44D:	No
		Amended Use:	No
		Amended ITU:	No
		Amended 44D:	No

Filed 44E:	No	Currently 44E:	No	Amended 44E:	No
Filed 66A:	No	Currently 66A:	No		
Filed No Basis:	No	Currently No Basis:	No		

▼ Current Owner(s) Information

Owner Name:	ZEARN, INC.				
Owner Address:	261 WEST 35TH STREET, 15TH FLOOR NEW YORK, NEW YORK UNITED STATES 10001				
Legal Entity Type:	CORPORATION	State or Country Where Organized:	DELAWARE		

▼ Attorney/Correspondence Information

Attorney of Record			
Attorney Name:	Kristen McCallion	Docket Number:	37563.000500
Attorney Primary Email Address:	tmdoctc@fr.com	Attorney Email Authorized:	Yes
Correspondent			
Correspondent Name/Address:	KRISTEN MCCALLION FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MINNESOTA UNITED STATES 55440-1022		
Phone:	212-641-2261	Fax:	877-769-7945
Correspondent e-mail:	tmdoctc@fr.com	Correspondent e-mail Authorized:	Yes

Domestic Representative - Not Found

▼ Prosecution History

Date	Description	Proceeding Number
Apr. 01, 2016	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 01, 2016	NON-FINAL ACTION E-MAILED	6325
Apr. 01, 2016	NON-FINAL ACTION WRITTEN	92829
Mar. 29, 2016	ASSIGNED TO EXAMINER	92829
Dec. 16, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Dec. 15, 2015	NEW APPLICATION ENTERED IN TRAM	

▼ TM Staff and Location Information

TM Staff Information			
TM Attorney:	MAZZELLA, BRANDY BARRE	Law Office Assigned:	LAW OFFICE 121
File Location			
Current Location:	TMO LAW OFFICE 121 - EXAMINING ATTORNEY ASSIGNED	Date in Location:	Apr. 01, 2016

▲ Assignment Abstract Of Title Information - None recorded

▲ Proceedings - None recorded

Exhibit B

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85254582

Filing Date: 03/01/2011

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	Towers of Power
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Towers of Power
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Douglas C Rubel
INTERNAL ADDRESS	2nd Floor
*STREET	60 Biltmore
*CITY	Asheville
*STATE (Required for U.S. applicants)	Arizona
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	28801
PHONE	828-398-8222
EMAIL ADDRESS	dorubel@gmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
*TYPE	INDIVIDUAL
*COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	028

IDENTIFICATION	Building games; Manipulative games
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/01/2011
FIRST USE IN COMMERCE DATE	At least as early as 01/01/2011
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT 11\852\545\85254582\xml1\ FTK0003.JPG
SPECIMEN DESCRIPTION	Production artwork of product packaging
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
CORRESPONDENCE INFORMATION	
*NAME	Douglas C Rubel
INTERNAL ADDRESS	2nd Floor
*STREET	60 Biltmore
*CITY	Asheville
*STATE (Required for U.S. applicants)	Arizona
*COUNTRY	United States
*ZIP/POSTAL CODE	28801
PHONE	828-398-8222
*EMAIL ADDRESS	dorubel@gmail.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Douglas C Rubel/
* SIGNATORY'S NAME	Douglas C Rubel
* SIGNATORY'S POSITION	Owner
* DATE SIGNED	03/01/2011

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85254582

Filing Date: 03/01/2011

To the Commissioner for Trademarks:

MARK: Towers of Power (Standard Characters, see [mark](#))

The literal element of the mark consists of Towers of Power.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Douglas C Rubel, a citizen of United States, having an address of

2nd Floor,
60 Biltmore
Asheville, Arizona 28801
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 028: Building games; Manipulative games

In International Class 028, the mark was first used at least as early as 01/01/2011, and first used in commerce at least as early as 01/01/2011, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Production artwork of product packaging.

[Specimen File1](#)

The applicant's current Correspondence Information:

Douglas C Rubel
2nd Floor
60 Biltmore
Asheville, Arizona 28801
828-398-8222(phone)
dorubel@gmail.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Douglas C Rubel/ Date Signed: 03/01/2011

Signatory's Name: Douglas C Rubel
Signatory's Position: Owner

RAM Sale Number: 1015
RAM Accounting Date: 03/02/2011

Serial Number: 85254582
Internet Transmission Date: Tue Mar 01 14:47:11 EST 2011
TEAS Stamp: USPTO/FTK-XX.XXX.XXX.XXX-201103011447115
01020-85254582-48061faaa2f70a6ed888ac095
dbdf4d9add-CC-1015-20110301132808395368

Towers of Power



**The endless possibilities of the unseen
creative forces come to life in your hands.**

Much more than building with shapes; you build with polarized energy forms that require more feeling, less thinking—to combine for unexpectedly complex, eye-catching creations. And, the energy field changes with each piece you add.



TOWERS OF POWER™

TRAPEZOIDS